



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, DC 20314-1000

REPLY TO
ATTENTION OF

February 10, 2014

Regulatory Program

Secretary Marlene Dortch
Federal Communications Commission Headquarters
445 12th Street SW, Room TW-A325
Washington, DC 20554

Submitted via docket No. 13-240 at fjallfoss.fcc.gov/ecfs2/

Dear Secretary Dortch:

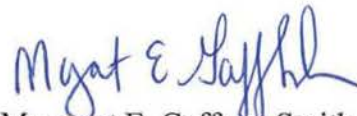
The U.S. Army Corps of Engineers appreciates the opportunity to comment on the FCC's proposed draft *Program Comment to Govern Review of Positive Train Control Facilities Under Section 106 of the National Historic Preservation Act*. Installation of Positive Train Control (PTC) facilities may include activities that require Department of Army authorization pursuant to Section 404 of the Clean Water Act for the discharge of dredged or fill material into waters of the U.S. and/or Section 10 of the Rivers and Harbors Act of 1899 for work or structures in, over, or under navigable waters of the U.S., or otherwise affecting the course, location, or condition of those waters.

Compliance with Section 106 of the National Historic Preservation Act, Federal Government Tribal Trust Responsibilities, and Section 7 of the Endangered Species Act is required for all federal actions, including the installation of the FCC's Positive Train Control facilities and any associated Corps' authorizations. The FCC has the federal lead for documenting compliance with federal requirements and the Corps will adopt the FCC's documentation, as appropriate.

To ensure efficient and effective decision-making, the FCC should ensure the proposed PTC facilities are located in places where there will be no effect to resources protected under Section 106 of the National Historic Preservation Act and Section 7 of the Endangered Species Act and where the project will not adversely affect Federally-recognized Tribes, their reservation lands and resources, or resources protected and reserved by treaties. The attached document outlines additional recommendations to ensure timely decision-making for the proposed PTC facilities.

Should you have any questions regarding how our agencies can most effectively work together during the FCC's implementation of these important facilities, please contact me at (202) 761-8560 or via e-mail at meg.e.gaffney-smith@usace.army.mil or have a member of your staff contact Ms. Amy Klein at (202) 761-4599 or via e-mail at amy.s.klein@usace.army.mil.

Sincerely,

A handwritten signature in blue ink, appearing to read "Meg E Gaffney-Smith".

Margaret E. Gaffney-Smith
Chief, Regulatory Program

U.S. Army Corps of Engineers Regulatory Program comments on FCC's Program Comment for compliance with Section 106 of the NHPA

- Installation of Positive Train Control (PTC) facilities may include activities that require Department of Army authorization pursuant to Section 404 of the Clean Water Act for the discharge of dredged or fill material into waters of the U.S. and/or Section 10 of the Rivers and Harbors Act of 1899 for work or structures in, over, or under navigable waters of the U.S., or otherwise affecting the course, location, or condition of those waters.
- The entities undertaking regulated activities associated with the installation of the PTC facilities will need to apply for and receive authorization from the Corps prior to implementing regulated activities. Regulated activities may qualify for authorization under a general permit, which may require the entity to submit a pre-construction notification and receive verification from the Corps prior to implementing the activity.
- Applications and pre-construction notifications must be submitted to the appropriate Corps of Engineers District Regulatory office, which can be determined by visiting: <http://w3.saj.usace.army.mil/permits/HQAvatar/index.htm>
- FCC would be the lead federal agency for compliance with Section 106 of the NHPA and Section 7 of the Endangered Species Act for PTC facilities. We note Section 7 compliance is not discussed in this document. For activities associated with PTC facilities that also require Department of Army authorization, the FCC needs to clarify what documentation will be provided to the Corps of Engineers to demonstrate FCC coordination and compliance with Section 106 and Section 7 so that information can be incorporated by reference into the Corps' review of applications/pre-construction notifications. We encourage the FCC to develop standard documents for use by applicants as part of any permit application package they may be submitting. It may have standard language referencing the Program Comment with a "check in the box" section for FCC findings as well as supporting documentation such as SHPO/THPO letters. It should also include appropriate Section 7 documentation supporting the FCC's determination.
- Similarly, we understand that other entities may receive a delegation of authority from the FCC to comply with Section 106 of the NHPA, including the ability to directly coordinate with Tribes and SHPOs. FCC needs to clarify what notification it will provide the Corps to verify such entities are approved to conduct Section 106 consultations on its behalf and ensure that it is accomplished in accordance with Federal requirements.
- FCC needs to clarify Part V.7 for Other Federal Agency Involvement. It states, "... applicants shall invite comment from any Federal agency with jurisdiction over land or historic properties within the APE of any proposed PTC wayside structure within a submission. Federal agencies shall respond to such requests within 30 days or will be deemed to have no interest..." Note that a lack of response from the Corps to a general comment request letter cannot be interpreted that Regulatory requirements have been waived if regulated activities are necessary. Project proponents must contact the Corps directly if potentially regulated activities are proposed. The Corps will then confirm whether or not authorization is required.